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**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

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| In re: Appeal of Bruce Struthers, | No. MUP-12-016 |
| Appellant, | APPELLANT’S RESPONSE TO RESPONDENTS’ MOTION TO ADJUST HEARING DATE |
| vs. | |
| Seattle Public Utilities and Seattle Department of Planning and Development | |
| Respondents. | |

I. INTRODUCTION

On June 14, 2012, respondent Seattle Department of Planning and Development published a land use decision to permit respondent Seattle Public Utilities to proceed with the Meadowbrook Pond and Improvements Project. The DPD project number was 3013236, and the proposed action was described as:

Land Use Application to allow a 10% capacity expansion (1.5 million gallons) of an existing utility service use in a public facility (Meadowbrook Pond). Review includes 9,700 cu. yds. of dredging, removal of 10,000 cu. yds. of material (expansion area),

1 new access ramps and widened access routes. Determination of Non-Significance
2 prepared by Seattle Public Utilities.

3 On June 28, 2012 appellant Bruce Struthers filed a timely appeal of the land use
4 decision with the Seattle Hearing Examiner. On July 9, 2012 the parties filed a Joint Motion
5 to Bifurcate and Affirm the Decision in Part, requesting that the Hearing Examiner issue an
6 order allowing the dredging component of this project proceed. The Hearing Examiner issued
7 the requested order on July 10, 2010. On July 18, 2012, Assistant City Attorney Jeff Weber
8 filed a notice of appearance. On July 18, 2012 appellant Bruce Struthers had served all
9 parties with a preliminary list of witnesses and exhibits by electronic mail. David Jacobs of
10 Seattle Public Utilities was listed as one of the potential witnesses. The pre-hearing meeting
11 ordered by the Hearing Examiner was held on July 19, 2012. The respondents were not
12 prepared to provide a preliminary list of witnesses and exhibits at that time. Hearing
13 Examiner issued an order that day, setting schedules for motion practice in this appeal,
14 including several filing deadlines related to discovery. The issue of calendars was discussed
15 at length during the pre-hearing meeting, and the Examiner's order was requested to solidify
16 agreement on what had been discussed. The hearing originally scheduled for August 14,
17 2012 was continued to October 22, 2012 to accommodate pre-hearing motion practice and
18 discovery. On August 1, 2012, in compliance with the Hearing Examiner's July 19 order,
19 Assistant City Attorney Jeff Weber filed the Respondents' preliminary witness and exhibit
20 list. David Jacobs, Jr. was listed as one of the City's expert witnesses. At the same time, the
21 City Attorney filed a motion to adjust the second hearing date, requesting a subsequent
22 continuance to the week of October 29, 2012 or later, in accommodation of a previously
23 undisclosed two week vacation by Mr. Jacobs.
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II. ARGUMENT

Both the Hearing Examiner and the Appellant have been extremely accommodating to the schedules of respondents Seattle Public Utilities and Department of Planning and Land Use. Seattle Public Utilities procrastinated throughout the permit application process for the Meadowbrook Pond Dredging and Improvement Project, and filed inadequate filings before the Department of Planning and Land Use, requiring multiple corrections and subsequent reviews (Exhibit A). Final approval of the permit application was not complete until June 7, which did not allow the Director of the Department of Planning and Development to issue a decision until June 14, 2012¹. The appellant filed a timely appeal of the Director's Land Use Decision on June 28, 2012 with the Hearing Examiner. Contractors were restricted to work during a "fish window" that began July 1 and completes August 30 (Exhibit B, p. 16). Project Manager Greg Stevens was on a vacation on June 28, 2012 and did not return until Thursday, July 5, 2012 (Exhibit C). City Land Use Attorney Roger Wynne worked with the appellant over the July 4th holidays to produce a Joint Motion to Bifurcate to allow dredging to occur within the fish window.

The Hearing Examiner has been extremely respectful of demands on the time of all parties. When Land Use attorney Jeff Weber filed a notice of appearance the day before the pre-hearing conference scheduled a week before on July 12, he was not prepared to present a preliminary list of witnesses and exhibits. The Public Guide to Appeals and Hearings Before the Hearing Examiner² advises the general public on how to prepare for the pre-hearing conference, in a plain language explanation of the requirements of HE Rule 2.09(a)(3):

¹ Director's Decision: Hearing Examiner's file

² http://www.seattle.gov/examiner/docs/RulesofPracticeandProcedure_080112.pdf, page 6

1 “You will not need a final list of witnesses and exhibits at the prehearing conference
2 but you should have a preliminary list”.

3 The Hearing Examiner issued a pre-hearing order on July 19 that set out schedules for
4 motion practice, discovery and continued the August 14 hearing to October 22, 2012. In
5 compliance with that order, respondents belatedly disclosed their preliminary list of five
6 witnesses. At the same time, they requested a second continuance to accommodate the
7 previously undisclosed vacation schedule of one potential witness. The respondents
8 expressed regret for any inconvenience to the Hearing Examiner, the appellant and fifteen
9 other potential witnesses, but “can see no prejudice to any party”.

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11 This request imposes a burden on the Hearing Examiner, who is required by HE Rule
12 2.11 “to take all necessary action to avoid undue delay in the proceedings”. Had the
13 respondents communicated with the appellant before filing their motion, the prejudice would
14 have been readily apparent. Appellant Bruce Struthers works as a system administrator for
15 Drugstore.com, an Internet company owned by Walgreens Corporation. Like all American
16 retail companies, the Christmas season is the peak time of the year for sales. Sales during the
17 holiday season can make or break a retail company’s fiscal results. Internet companies in
18 particular require complete focus and dedication from all information technology staff from
19 early October to the first week of January. Vacation requests from information technology
20 staff during this time are routinely denied, as all staff are required to ensure the reliability and
21 performance of web servers, database servers and other systems.


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23 The appellant was aware of his job demands, but had anticipated that the hearing
24 would have been held before the demands of the holiday retail season began in earnest. A
25 one-week delay comes too close to the holiday season, and is extremely prejudicial to the
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1 appellant. To accommodate the vacation of this one witness, the appellant respectfully
2 requests that this witness respond to the interrogatories and requests for production that are
3 within his area of expertise. This would allow the previously scheduled hearing to be
4 conducted expeditiously in compliance with Rule 2.06.

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6 **III. RELIEF REQUESTED**

7 Appellant Bruce Struthers respectfully requests that the Hearing Examiner deny the
8 Respondents' Motion to Adjust Hearing Date and retain the scheduled hearing date of
9 October 22, 2012.

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11 DATED this 6th day of August, 2012.

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14 By: 
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